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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KEVIN A. GARY

)

Civil Action No:

)

Plaintiff,

)

)

v.

)

Case:2:17-cv-10544

Judge: Drain, Gershwin A.

MJ: Stafford, Elizabeth A.

Filed: 02-17-2017 At 10:00 AM

CMP GARY v TRUEBLUE, INC (dat)

)

TRUEBLUE, INC., d/b/a/

)

LABOR READY, INC., d/b/a/

)

PEOPLEREADY, INC

)

)

Defendant's

)

ORIGINAL COMPLAINT

NOW COMES the Plaintiff, KEVIN A. GARY, by and through himself and for his Complaint against the Defendant, TRUEBLUE, INC., d/b/a PEOPLEREADY, INC., d/b/a LABORREADY INC., (hereinafter, Defendant's) and Plaintiff states as follows:

NATURE OF THIS ACTION

1. Plaintiff brings this action for actual and statutory damages arising out of and relating to the conduct of Defendant's, to include all of its affiliates, subsidiaries, and/or related entities, as well as all persons and entities acting on behalf of Defendants, including but not limited to TRUEBLUE, INC., d/b/a/ PEOPLEREADY, INC., d/b/a LABORREADY INC., and, in negligently,

knowingly, and/or willfully contacting Plaintiff on his cellular telephone without his prior express written consent within the meaning of the TCPA. This is an action for actual and statutory damages for violations of the Telephone Consumer Protection Act (hereinafter, "TCPA"), 47 U.S.C. section 227 *et seq.*¹

JURISDICTION & VENUE

2. Jurisdiction of this Court is conferred by 15 U.S.C. § 1692 and 28 U.S.C. § 1331. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. KEVIN A. GARY, (hereinafter, "Plaintiff"), is a natural person who was at all relevant times residing in the county of Wayne, state of Michigan.
5. Defendant's Trueblue, Inc, d/b/a Peopleready, Inc., is a domestic company with a corporate office located at 1015 A Street, Tacoma, Washington, 98401
6. At all relevant times, Defendant has conducted business in Michigan, solicited business in Michigan, engaged in a persistent course of conduct in Michigan, or has derived substantial revenue from services rendered in Michigan.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

(TCPA) 47 U.S.C §227

7. In 1991, Congress enacted the TCPA in response to a growing number of

consumer complaints regarding certain telemarketing practices.

8. The TCPA regulates, inter alia, the use of automated telephone equipment, or “predictive-dialers”, defined as equipment which “has the capacity...(a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers. 47 U.S.C. § 227(a)(1). Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.¹

9. According to findings by the Federal Communications Commission (FCC), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.²

A BRIEF OVERVIEW OF TEXT MESSAGING

10. One of the newest types of such bulk marketing is to advertise through Short Message Services. The term “Short Message Service” or “SMS” describes a

¹ 47 U.S.C. § 227 (b)(1)(A)(iii)

² Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014 (2003)

messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 120-150 characters.

11. An “SMS message” is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient’s cell phone rings, alerting him or her that a call is being received.

12. Unlike more conventional advertisements, SMS calls, and particularly wireless or mobile spam, can actually cost their recipients money, because cell phone users must frequently pay their respective wireless service providers either for each text message call they receive or incur a usage allocation deduction to their text plan, regardless of whether or not the message is authorized.

13. Most commercial SMS messages are sent from “short codes” (also known as “short numbers”), which are special cellular telephone exchanges, typically only five or six digit extensions, that can be used to address SMS messages to mobile phones. Short codes are generally easier to remember and are utilized by consumers to subscribe to such services such as television program voting or more benevolent uses, such as making charitable donations.

14. A short code is sent to consumers along with the actual text message and conclusively reveals the originator of the SMS message.

15. Text messages are “calls” within the context of the TCPA. See...Satterfield v. Simon & Schuster, Inc., 569 F.3d (9th Cir. 2009).

ALLEGATIONS OF FACT

16. At some point in 2013, Plaintiff seeked employment with the company named Trueblue, Inc., d/b/a/ Peopleready, Inc., d/b/a/ Laborready, Inc. Sometime after, Plaintiff began receiving text messages on his cellular phone from SMS short code 42800 owned by the Defendant’s.

17. Frustrated by all the text messages, on or about September 17, 2016, Plaintiff informed the Defendant’s that he no longer wished to receive text messages. In fact, Plaintiff opted out of text messages by stating that he no longer wished to be contacted through the Defendant’s text messages service.

18. Plaintiff continued to receive a barrage of text messages from the Defendant, even after opting out. The text messages were similar and read as follows:

LR(Westland): WE need a person to help assist a driver with deliveries in Westland ASAP. payis \$9. If insterted text ST.

PONTIAC: seeking a foodservice candidate with clean, professional appeareance to work in Troy ongoing Mon-Fri; \$9.50 per hr txt “Foodservice”

NOVI: 7:30 AM Friday SOUTHFIELD JOB. 12 Mile Rd. Akiva Day School for Rand Construction. Cleanup. If you are interested, Txt. South

LR(1678): Need 1 worker for today at 9am in Fraser to assist with moving furniture. Text SOCLEAN

19. After informing the Defendant to stop texting his cell phone, Plaintiff received at least over one-thousand-four-hundred and fifty one (1,4551) text messages on his cell phone from Defendant to his cellular phone at 248-703-XXXX that were nuisance to him.

20. Plaintiff suffered actual damages in the form of embarrassment, humiliation and anger as a result of Defendant's text messages. He was needlessly bothered and was forced to utilize minutes from his cell phone which could have been used for other purposes.

21. Plaintiff suffered a concrete and real invasion of Plaintiff's legally protected privacy rights through Defendant's violation of the TCPA. The continuous unwarranted text messages are a nuisance, and caused additional data rate charges to his cellular telephone plan.

22. Plaintiff suffered harm and damages in the form of emotional distress such as anger, and resentment each time he received a text message from the Defendant.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227, et seq

23. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

24. Using prohibited equipment and without prior express written consent, the Defendant, contacted the Plaintiff over one-thousand-four-hundred and fifty-one (1,4551) times by means of automatic text messaging to a cellphone or pager in violation of 47 U.S.C. §227(b)(1)(A)(iii).

25. Plaintiff instructed Defendant to stop all calls to him and cease texting his cellular telephone. Regardless, Defendant continued to place automated text messages to Plaintiff's cellular telephone even though Defendant lacked consent to text his number. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

26. The telephone number called by Defendant's was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

27. The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

PRAYER FOR RELIEF

a) As a result of the Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to treble damages of up to \$1,500.00 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3);

b) . As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

c) Assessing against Defendant, all costs incurred by the Plaintiff; and

d) Awarding such other relief as justice and equity may require.

Respectfully submitted,


Kevin Gary

3210 Hogarth

Detroit, MI 48206

kagary14@hotmail.com

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

KEVIN A. GARY

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Wayne

Trueblue Inc d/b/a Labor Ready Inc

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Pierce

Case: 2:17-cv-10544

Judge: Drain, Gershwin A.

MJ: Stafford, Elizabeth A.

Filed: 02-17-2017 At 10:00 AM

CMP GARY v TRUEBLUE, INC (dat)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PARTIES (For Diversity Cases Only) and One Box for Defendant

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 USC 222 et seq Telephone Consumer Protection Act (TCPA)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Feb 15, 2017

Kevin A. Gary

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

New Lawsuit Check List

Instructions: Put a check mark in the box next to each appropriate entry to be sure you have all the required documents.

<input checked="" type="checkbox"/> Two (2) completed Civil Cover Sheets.	Case: 2:17-cv-10544 Judge: Drain, Gershwin A. MJ: Stafford, Elizabeth A. Filed: 02-17-2017 At 10:00 AM CMP GARY v TRUEBLUE, INC (dat)
<input checked="" type="checkbox"/> Enter the number of defendants named in your lawsuit in the blank below, add 2 and then enter the total in the blank. <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="text-align: center; margin-right: 10px;"> <u>1</u> # of Defendants </div> <div style="text-align: center; margin-right: 10px;"> + 2 = <u>3</u> Total </div> <div>Complaints.</div> </div> <div style="margin-top: 10px;"> Received by Clerk: <u>[Signature]</u> Addresses are complete: <input checked="" type="checkbox"/> </div>	

<input type="checkbox"/> If any of your defendants are government agencies : Provide two (2) extra copies of the complaint for the U.S. Attorney and the Attorney General.	
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If Paying The Filing Fee:	If Asking That The Filing Fee Be Waived:
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<input type="checkbox"/> Current new civil action filing fee is attached. Fees may be paid by check or money order made out to: <div style="text-align: center;">Clerk, U.S. District Court</div> Received by Clerk: _____ Receipt #: _____	<input checked="" type="checkbox"/> Two (2) completed Application to Proceed in District Court without Prepaying Fees or Costs forms. Received by Clerk: <u>[Signature]</u>
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Select the Method of Service you will employ to notify your defendants:

Service via Summons by Self	Service by U.S. Marshal (Only available if fee is waived)	Service via Waiver of Summons (U.S. Government cannot be a defendant)
<input type="checkbox"/> Two (2) completed summonses for each defendant including each defendant's name and address. Received by Clerk: _____	<input checked="" type="checkbox"/> Two (2) completed USM – 285 Forms per defendant, if you are requesting the U.S. Marshal conduct service of your complaint. <input checked="" type="checkbox"/> Two (2) completed Request for Service by U.S. Marshal form. Received by Clerk: <u>[Signature]</u>	<input type="checkbox"/> You need not submit any forms regarding the Waiver of Summons to the Clerk. <u>Once your case has been filed, or the Application to Proceed without Prepaying Fees and Costs has been granted, you will need:</u> <ul style="list-style-type: none"> One (1) Notice of a Lawsuit and Request to Waive Service of a Summons form per defendant. Two (2) Waiver of the Service of Summons forms per defendant. Send these forms along with your filed complaint and a self-addressed stamped envelope to each of your defendants.

Clerk's Office Use Only

Note any deficiencies here: